

## DOCKET NO. 3:18-cv-00657-FDW-DCK

Plaintiff,

CHARTER COMMUNICATIONS,

ORDER

Defendant's reply points out the supplemental allegations Plaintiff has set forth in his response to Defendant's motion to dismiss. The Court finds that under this record, an opportunity to amend the complaint – as opposed to dismissal – is more appropriate here. While Plaintiff is not entitled to amendment as a matter of course, the Federal Rules of Civil Procedure provide:

Fed.R.Civ.P. 15(a)(2).

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535 F.3d 295, 298 (4th Cir. 2008) (citing HCMF Corp. v. Allen, 238 F.3d 273, 276-77 (4th Cir. 2001); see also Foman v. Davis, 371 U.S. 178, 182 (1962)). However, “the grant or denial of an opportunity to amend is within the discretion of the District Court.” Pittston Co. v. U.S., 199 F.3d 694, 705 (4th Cir. 1999) (quoting Foman, 371 U.S. at 182). The Fourth Circuit’s policy is to “liberally allow amendment.” Adbul-Mumit v. Alexandria Hyundai, LLC, 896 F.3d 278, 293 (4th Cir. 2018) (quoting Galustian v. Peter, 591 F.3d 724, 729 (4th Cir. 2010)).

The Court sees no evidence of prejudice, bad faith, or futility to outweigh sufficient to outweigh the policy favoring granting leave to amend, particularly given Plaintiff’s *pro se* status. In order to make clear the allegations that have been set forth over multiple documents, the Court directs Plaintiff to file, **within fourteen (14) days** of the entry of this order, a new, complete Amended Complaint that includes all remaining claims and allegations against Defendant Schneider only.

In light of allowing this amendment, the Court DENIES AS MOOT Defendant’s Motion to Dismiss. Young v. City of Mount Ranier, 238 F.3d 567, 573 (4th Cir. 2001) (As a general rule, “an amended pleading ordinarily supersedes the original and renders it of no legal effect.” (citation omitted); see also Hall v. Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW, 2011 WL 4014315, at \*1 (W.D.N.C. June 21, 2011) (citing Colin v. Marconi Commerce Sys. Emps.’ Ret. Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004)). This ruling is without prejudice to Defendant to reassert its arguments, if applicable, in a subsequent motion to dismiss or at summary judgment.

IT IS THEREFORE ORDERED that Plaintiff shall have until March 17, 2020, to file an Amended Complaint. Plaintiff is cautioned that **absent extraordinary circumstances, no further**

**amendments to the complaint are likely to be allowed. Failure to comply with these directives could result in summary dismissal of the claims.**

IT IS ALSO ORDERED that Defendant's Motion to Dismiss (Doc. No. 9) is DENIED AS MOOT without prejudice to reassert any applicable arguments in a subsequent dispositive motion.

IT IS SO ORDERED.

Signed: March 3, 2020

A handwritten signature in black ink, appearing to read "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney  
Chief United States District Judge

